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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,439	08/30/2001	Oral Fatih Sekendur		7902

7590 04/26/2004
ORAL SEKENDUR
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CHICAGO, IL 60614

EXAMINER

LEWIS, RALPH A

ART UNIT PAPER NUMBER

3732

DATE MAILED: 04/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/942,439	Applicant(s) SEKENDUR, ORAL FATIH	
	Examiner Ralph A. Lewis	Art Unit 3732	

--Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached "Advisory Comments"t.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


Ralph A. Lewis
Primary Examiner
AU3732

Advisory Comments

In response to the rejection base on Alexander (1,040,972) applicant argues that unlike applicant's invention, the Alexander method requires a waxy lubricant and involves an investment/cast step. While this may be the case, **applicant's broad claims set forth no such distinctions.** The Alexander method clearly meets all the limitations required by the **current claims.**

In response to the rejection based on Shoher et al (5,234,343), applicant argues that unlike applicant's invention Shoher et al requires a wax binder. While this may be the case, **applicant's broad claims call for no such distinction.** Moreover, in response to applicant's arguments that powder cannot be a formable metal the examiner pointed out that applicant specifically claims a paste of flux and metal powder as the "formable metal." The examiner's position has been that if a "paste of flux and metal powder" meet the "formable metal" limitation, then so does Shoher et al metal powder with wax binder. Applicant now confusingly contradicts his claims and states "applicant's 'joining means' comprising a paste of flux and metal powder" and that "the metal powder acts as a 'solder'" even though the claims explicitly state that the "formable metal" may be "flux and metal powder."


It appears that applicant needs to understand that the claims define the subject matter covered by a patent application. If the claims are too broad and include within their scope other known devices or methods, then the claims need to be changed in an amendment to narrow the scope of the claims so that they no longer include within their

scope other known devices or methods (or obvious variations thereof). Applicant has repeatedly failed to explain how the **specific claim language** distinguishes his invention from the prior art and has failed to provide for any amendments to the **language of the claims** that would make such a distinction. More specifically, the examiner is looking for arguments such as "claim a, line 3, has been amended to require "heating at a temperature of 450 degrees" the Smith reference used in the rejection at column x, line 20 indicates that the widget is cooled, not heated as required by the claim." Arguments that applicant's invention includes some **unclaimed** method step that is different from the prior art are irrelevant.

Finally, applicant's repeated requests that the examiner draft allowable claims are noted and after serious consideration and study the examiner is at a loss to provide for any meaningful suggestions in distinguishing the **claimed** invention from the prior art. As the rejections indicate, even if applicant were to limit the claims to formable metallic fibers (not metallic powder), then the invention is pretty much met by Jackson (1,040,972). If applicant amended the pending claims to exclude from within their scope methods using binders and lubricants as in the Alexander and Shoher et al references, then the claims would still be met by other references of record such as Meisel (4,867,683) who discloses the use of formable metal screen/ mesh/fabric which is formed into a bridge and filled with a joining means to form a solid bridge prosthesis. Attention is also directed to the prior art of Kobashigawa et al (5,829,979), Karmaker et al (6,030,220) and Prasad et al (6,200,136 B1).

Any inquiry concerning this communication should be directed to Ralph Lewis at telephone number (703) 308-0770. Fax (703) 872-9306. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Kevin Shaver, can be reached at (703) 308-2582.

R.Lewis
April 21, 2004



Ralph A. Lewis
Primary Examiner
Au3732